



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 12, 1997

Mr. Edward W. Dunbar  
Law Offices of Dunbar, Barill,  
Crowley & Hegeman, L.L.P.  
4726 Transmountain Drive  
El Paso, Texas 79924

OR97-2480

Dear Mr. Dunbar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109986.

The El Paso County Community College District (the "district"), which you represent, received a request for all documentation and reasons for the non-renewal of the requestor's employment contract. You explain that the request may include information related to a pending complaint before the Equal Employment Opportunity Commission ("EEOC"). You argue that to the extent the request seeks such records, you wish to withhold them under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the sample of documents that you have submitted.<sup>1</sup> Because you do not claim any exception for any other responsive information concerning the requestor's non-renewal that does not relate to the EEOC complaint, we presume that you have released this information.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

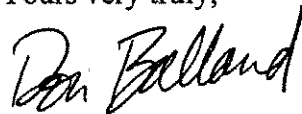
The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The district must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that a complaint has been filed with the EEOC. You have provided this office with the charge number for the complaint and assert that the district is engaged in the defense of this complaint. This office has previously held that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Given the circumstances that you have shown, we find that the district has met the first prong of the section 552.103(a) test. We also conclude that the information you have submitted is related to the anticipated litigation. Therefore, the department may withhold the requested information that relates to the pending complaint under section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 109986

Enclosures: Submitted documents

cc: Ms. Diane Lynn Pierce-Ortega  
Instructional Services Center Technician  
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(w/o enclosures)